85-1784

No.

Supreme Court, U.S.
FILED
APR 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

PAUL R. BONANSINGA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

STEVEN J. ROSENBERG, P.C.
ATTORNEY AT LAW
77 West Washington Street
Suite 1614
Chicago, Illinois 60602
(312) 726-0383
Counsel for Petitioner

April 29, 1986

The Scheffer Press, Inc.—(312) 263-6850

QUESTION PRESENTED

1. Whether a Court of Appeals may rewrite a jury's verdict by basing its affirmance of two otherwise reversible mail fraud convictions on a scheme of which defendant was acquitted.

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	iii
QUESTION PRESENTED	i
OPINION BELOW	1
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT REWROTE THE JURY'S VERDICT BY BASING ITS AFFIRMANCE OF TWO OTHERWISE REVERSIBLE MAIL FRAUD CONVICTIONS ON A SCHEME OF WHICH DEFENDANT WAS ACQUITTED.	4
CONCLUSION	7
APPENDIX (Opinion below, order denying rehearing)	A1, 12A

TABLE OF AUTHORITIES

PAGE

Kann v. *United States,* 323 U.S. 88 (1944) 4

Parr v. *United States,* 363 U.S. 370 (1960) 4, 5

United States v. *Bonansinga,* 85-1119, slip op. (7th Cir. September 18, 1985) 4, 5

United States v. *Green,* 85-2356, slip op. (7th Cir. February 25, 1986) 6

United States v. *Maze,* 414 U.S. 395 (1974) 4

United States v. *Wormick,* 709 F.2d 454 (7th Cir. 1983) 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No.

PAUL R. BONANSINGA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The petitioner PAUL R. BONANSINGA respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on January 29, 1986.

OPINION BELOW

The opinion of the Court of Appeals, and its Order denying the Petition for Rehearing with suggestion on Rehearing En Banc appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on September 18, 1985. A timely Petition for Rehearing En Banc was denied on January 29, 1986, and this Petition for Certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTE INVOLVED

18 U.S.C. §**1341. Frauds and Swindles**

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

Defendant, PAUL R. BONANSINGA, was indicted on 27 counts of racketeering and mail fraud arising from the alleged abuse of his position as Commissioner of the Department of Public Property, in Springfield, Illinois, commonly known as City Water, Light & Power ("CWLP"). A jury acquitted the defendant of all counts except Counts 22, 23, and 24. (Counts 25, 26, and 27 were severed and dismissed after trial.)

Counts 1 thru 21, *the acquittal counts,* charged defendant with taking kickbacks from a CWLP coal supplier and receiving money from the sale of jobs at CWLP.

Counts 22, 23, and 24 charged defendant with receiving $1,685 in auto supplies billed to CWLP by Springfield auto supply stores. The mailing in Count 22 (an invoice for $985.00) occurred on July 25, 1981. The mailings in Counts 23 and 24 (invoices and checks totaling $700.00) occurred in 1981 and 1983, respectively. Both CWLP and the auto supply stores were innocent parties.

On September 18, 1985 the Seventh Circuit reversed defendant's conviction on Count 22 because CWLP never paid for the goods shown on the invoices. Defendant's convictions on Counts 23 and 24 were affirmed.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT REWROTE THE JURY'S VERDICT BY BASING ITS AFFIRMANCE OF TWO OTHERWISE REVERSIBLE MAIL FRAUD CONVICTIONS ON A SCHEME OF WHICH DEFENDANT WAS ACQUITTED.

In affirming defendant's conviction on Counts 23 and 24, the Seventh Circuit turned its back on not only its own decisions, but those of the United States Supreme Court and other Circuits and has forsaken its role as the arbiter of legal issues.

In its opinion below, the Seventh Circuit acknowledged that in *United States* v. *Wormick,* 709 F.2d 454, 462 (7th Cir. 1983) it held that mailings "directed to the end of adjusting accounts between victims of a scheme after the scheme has reached fruition cannot support a mail fraud conviction." *United States* v. *Bonansinga,* No. 85-1119, slip op. at 5a (7th Cir. Sept. 18, 1985). It further acknowledged that *Wormick* followed the teachings of the United States Supreme Court in *United States* v. *Maze,* 414 U.S. 395 (1974); *Parr* v. *United States,* 363 U.S. 370 (1960); and *Kann* v. *United States,* 323 U.S. 88 (1944). *Id.*

To avoid the crystal clear mandate of those cases, the Seventh Circuit reached back into the record and resurrected a scheme which the jury *did not find to exist.*

In its opinion below the Seventh Circuit said, in effect, that although the mailings in Counts 23 and 24 simply adjusted accounts between victims (CWLP and the stores) and would otherwise be reversible they are a proper basis

for defendant's conviction because they helped to conceal a broader scheme. *Bonansinga,* No. 85-1119, slip. op. at 7a-9a.

The critical flaw in the Court's reasoning is that it is bootstrapped from its own finding that a scheme existed — a finding that *the jury refused to make* in acquitting defendant of Counts 1 thru 21. By making such a finding, this Court has, in effect, reversed 21 verdicts of acquittal, granted the Government a new trial on Counts 1 through 21 and substituted its own judgment for that of the jury.

The kernel of the Court's opinion appears in a footnote. In a tortured attempt to distinguish *Parr* v. *United States,* 363 U.S. 370 (1960)* from this case, the Seventh Circuit stated:

> ". . . there was no *finding* in *Parr* that the petitioners were involved in an ongoing, virtually perpetual scheme, *as was (this) defendant.*" (emphasis supplied). *Id.* at 9a.

The obvious problem with this analysis is that there was *no finding in this case* that defendant was "involved in an ongoing, virtually perpetual scheme." To the contrary, this defendant was acquitted of those counts which charged such a scheme. The only basis for the Court's

---

* It is impossible to distinguish *Parr* from this case. In *Parr,* a jury convicted five members of a Texas schoolboard on 19 counts of mail fraud arising out of a misappropriation of $200,000.00 in District funds from 1949 thru 1954. Gasoline and other automotive products were purchased by the defendants for personal use and billed to the District. Nevertheless, the Court reversed the convictions, holding that the mailing of bills to the school district were not for the purpose of executing the scheme — that it was immaterial to any consummation of the scheme how the oil companies would collect from the District.

decision, is *its own finding* that defendant engaged in an ongoing scheme.

The importance of *Parr* was recently acknowledged by Circuit Judge Posner, in a dissenting opinion in *U.S.* v. *Green,* 85 - 2356, slip op. (7th Cir. Feb. 25, 1986) decided by the Seventh Circuit. Judge Posner wrote that ". . . *Parr* is not some legal sport that we are free to ignore because other courts of appeals have ignored it." *Id.* at 20. Judge Posner's dissent parallels in part, Petitioner's argument in the Seventh Circuit that for a mailing to violate the statute, it must be ". . . made for a fraudulent purpose," *Id.* at 16, and that the mailings would not have occurred ". . . had it not been for the fraudulent scheme." *Id.* at 20. Because the mailings in this case were invoices and checks mailed between the City and its suppliers in the normal course of business no *causal connection* existed between them and any fraudulent scheme and defendant's convictions should have been reversed. The Seventh Circuit, however, resuscitated Counts 23 and 24 by holding that they served to conceal a scheme of which defendant had been acquitted.

By transforming itself into a de novo jury the Seventh Circuit repudiated its own case law, that of the Supreme Court as well as other Circuits, overstepped its obligation to review only legal issues and cut the very heart out of defendant's acquittal.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,

Steven J. Rosenberg, P.C.
Attorney at Law
77 West Washington Street
Suite 1614
Chicago, Illinois 60602
(312) 726-0383
Counsel for Petitioner

April 29, 1986

INDEX TO APPENDIX

	PAGE
Opinion of the Seventh Circuit	1A
Order Denying Petition for Rehearing	12A

APPENDIX

In The
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 85-1119

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAUL R. BONANSINGA,

Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois, Springfield Division.
No. 84 CR 30068—HAROLD A. BAKER, *Judge.*

ARGUED JUNE 18, 1985—DECIDED SEPTEMBER 18, 1985

Before CUMMINGS, *Chief Judge,* BAUER, *Circuit Judge* and EASTERBROOK, *Circuit Judge.*

BAUER, *Circuit Judge.* Defendant, Paul Bonansinga, was indicted in a twenty-seven count indictment stemming from alleged abuse of his positions as a member of the City Council of Springfield, Illinois and as the Commissioner of the Department of Public Property, commonly known as City Water, Light & Power (CWLP). Defendant was tried before a jury in the Central District of Illinois, found guilty of Counts 22, 23 and 24, involving mail fraud, 18 U.S.C. § 1341, and acquitted of the other charges. The district judge sentenced defendant to a term of eighteen months imprisonment on Count 22 and suspended the imposition of sentence on the other two counts, ordering that defendant be placed on three years con-

current probation after the end of his parole supervision on Count 22. The district court also imposed a $1,000 fine for each of the three counts and ordered defendant to pay $1,685 in restitution as a special condition of probation. We affirm the conviction on Counts 23 and 24, reverse the conviction on Count 22, and remand for a new sentencing determination.

The three counts that form the basis of defendant's conviction all charged that defendant's accomplices, acting for defendant, took automotive supplies that were provided for the use of CWLP by the Springfield Auto Supply Company (Sasco) and S-M-W Auto Supply (SMW). Count 22 charged that defendant improperly received $985 worth of auto supplies. In July 1981 at defendant's request, James Hankins, who worked for CWLP and was a close friend of defendant, went to Sasco to pick up the supplies, which had been pre-ordered. Hankins signed invoices for these supplies but delivered them to defendant for defendant's own use, rather than to CWLP. The bill for these supplies, which Sasco mailed to CWLP on July 25, 1981, is the mailing alleged in Count 22. The city never paid Sasco for these supplies.

Count 23 charged that Patrick Butler, a long-time friend of defendant who was hired to various supervisory positions at CWLP after defendant's election, picked up supplies at the CWLP garage on several occasions during 1981 and 1982 and delivered them to defendant for defendant's own use. The check to pay for these supplies that CWLP mailed to SMW on December 21, 1981, was the mailing asserted to form the jurisdictional basis for this count.

Count 24 charged defendant with receiving $341.92 worth of auto supplies, picked up from SMW by James Hankins and Denton Meyer, another CWLP employee. The check mailed by the city to pay the four vouchers submitted by SMW for these items is the mailing alleged in this count.

To prove mail fraud, the government must establish: (1) that defendant participated in a scheme to defraud; and (2) that defendant caused the mails to be used in furtherance of the scheme. *See United States* v. *Brooks,* 748 F.2d 1199, 1202 (7th Cir. 1984); *United States* v. *Brack,* 747 F.2d 1142, 1146 n.3 (7th Cir. 1984), *cert. denied,* 105 S.Ct. 1193 (1985). Defendant first argues that the mailings that the government proved do not satisfy part two of the government's required showing.

The mailings in the instant case were between CWLP and the auto supply companies, none of whom were part of defendant's scheme, except to the extent of being victimized by it. However, mailings between innocent parties can support a mail fraud conviction. *See United States* v. *Lindsey,* 736 F.2d 433 (7th Cir. 1984); *United States* v. *Dick,* 744 F.2d 546 (7th Cir. 1984); *United States* v. *Wormick,* 709 F.2d 454 (7th Cir. 1983); *United States* v. *Galloway,* 664 F.2d 161 (7th Cir. 1981), *cert. denied,* 456 U.S. 1006 (1982). "It is not necessary that the scheme contemplate the use of the mails as an essential element." *Periera* v. *United States,* 347 U.S. 1, 8-9 (1954). "Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or when such use can be reasonably foreseen, even though not actually intended, then he 'causes' the mails to be used." *Id.* at 8-9. After defendant's friend, Hankins, picked up the supplies from Sasco, he signed the invoices that are charged in Count 22. It was forseeable that the mails would be used to send these invoices to CWLP. Similarly, when defendant asked Hankins and Meyer to pick up auto supplies at SMW, it was forseeable that CWLP would use the mails to pay for these items by check as charged in Count 24. Count 23, in contrast, is closer to simple theft than the other counts. The items involved in this count were taken by defendant's accomplices from the CWLP garage, not from the sellers of the goods. The mailing alleged was a check sent after the materials had been delivered to CWLP but before some (but not all) of the goods had been expropriated

for defendant. Nonetheless, at the time that they placed their orders at the CWLP garage, defendant's aides knew that the supplies that defendant had requested were going to be used by defendant and not CWLP. There was testimony that many of the items paid for by the check alleged in this count were not ordinarily on hand at CWLP. Therefore, defendant's scheme was the cause of the mailing alleged in this count, and the fact that the supplies were picked up from the CWLP garage rather than directly from SMW is immaterial. It is clear that defendant "caused" all of the mailings alleged in the indictment. The question remains, however, whether these mailings were "in furtherance" of the scheme to defraud.

Mailings between two innocent parties, as alleged in this case, are distinct from those found in the majority of mail fraud cases, which involve a mailing between a defendant (or his accomplices) and the intended victim. The mailings alleged in this case can be distinguished from those cases in which the mailing provided funds for further kickbacks to the defendant, *United States* v. *Primrose,* 718 F.2d 1484 (10th Cir. 1984), *cert. denied,* 104 S.Ct. 2352 (1984), or the source of the booty for the scheme, *United States* v. *Cavale,* 688 F.2d 1098 (7th Cir. 1982), cert. denied, 459 U.S. 1018, 1208 (1983); *United States* v. *Stanford,* 589 F.2d 285 (7th Cir. 1978), *cert. denied,* 440 U.S. 983 (1979). Nor can it be said that the mailings in this case served to "lull" the auto supply dealers into a false sense of security. *See United States* v. *Sampson,* 371 U.S. 75, 78 (1962); *United States* v. *Kuna,* 760 F.2d 813 (7th Cir. 1985). That theory has been applied only to mailings from one of the schemers, and to the extent that SMW received checks from CWLP paying for the merchandise (as charged in counts 23 and 24), there was no need to lull it because it ceased being a victim.

The Supreme Court has considered the sufficiency of mailings between innocent parties under 18 U.S.C. § 1341. In *United States* v. *Maze,* 414 U.S. 395, 400-01 (1974), the mailing, by a defrauded hotel, of invoices for hotel ser-

vices that respondent had obtained with a stolen credit card was held to be insufficient to support a mail fraud conviction. Similarly, in *Parr* v. *United States,* 363 U.S. 370 (1960), the Court struck down the conviction of members of a school district's Board of Trustees who fraudulently obtained gasoline and other filling station products and services for themselves with the district's credit card. The mailings charged were two invoices mailed by the oil company and, in a separate count, the district's check to the oil company paying one of the invoices. The Court stated, "[t]he scheme in each case had reached fruition when . . . the persons intended to receive the [goods and services] had received them irrevocably. It was immaterial to them, or to any consummation of the scheme how the [oil company] * * * would collect from the [District]. It cannot be said that the mailings in question were for the purpose of executing the scheme as the statute requires." Id. at 393 [quotation marks omitted, brackets in the original]. Finally, in *Kann* v. *United States,* 323 U.S. 88 (1944), the Court held that the depositing bank's mailing to the drawee bank, of a check obtained through petitioner's fraudulent scheme for diverting funds to a dummy corporation, was insufficient under 18 U.S.C. § 1341.

This court has written that the teaching of *Maze* and *Kann* is that mailings "directed to the end of adjusting accounts between victims of a scheme after the scheme has reached fruition cannot support a mail fraud conviction." *United States* v. *Wormick,* 709 F.2d 454, 462 (7th Cir. 1983). The mailings in the instant case were directed toward adjusting accounts between two victims. Thus, the pertinent question in this case is whether the scheme had reached fruition at the time of the charged mailings. We conclude that it had not.

A mailing will support a conviction even if it follows the defendant's fraudulent acts, *United States* v. *Gorny,* 732 F.2d 597, 601-2 (7th Cir. 1984); *United States* v. *Galloway,* 664 F.2d 161, 164-65 (7th Cir. 1981), *cert. denied,* 456 U.S. 1006 (1983), or occurs after the schemers have obtained the victim's money or goods, *United States* v.

Sampson, 371 U.S. 75, 80 (1962). Fraudulent schemes cannot often be easily dissected into discrete parts. In *United States* v. *Lindsey,* 736 F.2d 433 (7th Cir. 1984), the appellant was convicted of causing the "salvage value" designation to be deleted from the title before the wholesale sale of used automobiles, and in *United States v. Galloway,* the appellant was convicted of rolling back the odometer readings on automobiles before their wholesale sale. The mailings in both cases occurred after the appellants had obtained money for the cars, and consisted of title documents mailed from, and to, respectively, the Illinois Secretary of State and the Wisconsin Department of Transportation. The title documents were necessary for the retail customers to perfect title to the automobiles.[1] In *Lindsey* and *Galloway,* we noted that any failure of title would hurt the appellants' dealings with auto auctions and wholesalers in the future; thus the scheme did not reach fruition until the retail customers had perfected title. Similarly, in *United States* v. *Wormick,* 709 F.2d 454, 462 (7th Cir. 1983), we held that a check from a defrauded insurance company to an innocent car rental agency was in furtherance of the scheme to defraud.

---

[1] In contrast, in the instant case, check and invoice mailings were not necessary to perfect title to the goods misappropriated by defendant. Under the Uniform Commercial Code, as adopted in Illinois, title was perfected when the goods were delivered, ILL. ANN. STAT. ch. 26 § 2-401(2) (Smith-Hurd 1963), either when defendant caused them to be picked up from the supplier's place of business (Counts 22 and 24), or when they were shipped to CWLP (Count 23). The supplies furnished were mostly paints, sandpaper, and other consumables; therefore, under the U.C.C. the probable remedy for Sasco and SMW for non-payment following delivery would be an action for the price of the goods, not repossession. *Victorian Inns, Inc.* v. *Benda,* 22 Ill. App. 3d 247, 317 N.E.2d 287 (1974); ILL. ANN. STAT. ch. 26, §§ 2-703, 2-709 (Smith-Hurd 1963). *But cf.* ILL. REV. STAT. ch. 26 § 2-403(1) (Smith-Hurd 1963) (indicating that a purchaser misrepresenting his identity as a voidable title).

Defendant, a police officer, was convicted of submitting false accident and theft reports to assist others in filing false claims to their insurance company. The insurance company check was a sufficient mailing because it helped to conceal the fraud. Had no one involved in the purported accident temporarily rented a replacement car, the insurance company might have become suspicious. In the instant case, it is quite likely that CWLP orders were backed by the full faith and credit of the city, and the record shows that there were many auto dealers in Springfield. Nonetheless, the Count 23 check mailed by CWLP for goods defendant's co-workers took from the CWLP garage furthered the scheme by smoothing the relationship between CWLP and SMW and making it easier for Hankins and others to get supplies from SMW in the future. In addition, had SWM not been paid on December 21, 1981, it would have made inquiries and possibly triggered an investigation. The payment helped to conceal defendant's fraud, and allowed him to continue taking goods from the CWLP garage throughout 1982.

Count 24 presents a closer case. The check in this count was mailed on February 3, 1983. Defendant is not charged with having taken any auto supplies in 1983, and argues that the scheme had reached fruition by that date. However, defendant did not simply defraud the city of property that it owned; the indictment alleges that he also deprived citizens of his loyal, honest, and faithful service, free from the influence of corruption, collusion and dishonesty. *See United States* v. *Lea*, 618 F.2d 426, 429 (7th Cir.), *cert. denied,* 449 U.S. 823 (1980); *United States* v. *Bush*, 522 F.2d 641, 646-49 (7th Cir. 1975), *cert. denied,* 424 U.S. 977 (1976); *United States* v. *Isaacs,* 493 F.2d 1124, 1149-1150 (7th Cir. 1974), *cert. denied,* 417 U.S. 976 (1976). Not only did defendant take auto supplies, there was evidence that he extorted $32,000 in kickbacks from a CWLP coal supplier, used CWLP materials and labor to construct a garage at his residence, and took an orbital sander purchased by CWLP. The indictment charges that

this corruption persisted through the date of defendant's indictment in July 1984. In particular, James Faulkner testified that he approached Hankins in the spring of 1983 about getting his wife a job with CWLP, and eventually offered to pay $5,500. According to Hankins, Falkner paid $5,500 cash in May 1983, and Hankins, in turn, gave $4,000 to defendant. Faulkner's wife was later hired. Defendant schemed to deprive the citizens of Springfield of their right to faithful service free from the influence of corruption. If any part of his dishonesty came to light, the entire scheme might fail. While it is true that the jury acquitted defendant of selling jobs, this does not mandate the conclusion that defendant's overall scheme had reached fruition by 1983. *See United States* v. *Chappell,* 698 F.2d 308, 310 (7th Cir.) *cert. denied,* 461 U.S. 931 (1983). The jury might have been exercising it's "historic power of lenity." *United States* v. *Carbone,* 378 F.2d 420, 423 (2d. Cir.), *cert. denied,* 389 U.S. 914 (1967). Juries frequently convict on some counts but acquit on others because of compassion or compromise. *United States* v. *Fox,* 433 F.2d 1235, 1238 & n.22 (D.C. Cir. 1970).

In addition, the present case is strikingly similar to *United States* v. *Dick,* 744 F.2d 546 (7th Cir. 1984), in which a mailing between two victims of a scheme that ultimately determined who bore the loss was held to be sufficient to support a mail fraud conviction. The defendant was an attorney for Heritage Insurance Company, a surety. He was convicted of participating in a scheme to rig bids for a contract to complete a construction project. Defendant used his position to assure that a particular concrete subcontractor was selected, and this person in turn let the project to another subcontractor at half the price. The evidence that defendant had personally received any pecuniary gain from the fraud was unclear. *See id.* at 551. He argued that reimbursement checks from the Small Business Administration (SBA) to Heritage were not in furtherance of the scheme, apparently because they were mailed after the surreptitious subcontractor

had been fully paid. *Id.* at 552 n.10. This court held that reimbursement checks from SBA to Heritage were chargeable mailings. Although Heritage was an innocent victim of the scheme, this court concluded that the scheme did not reach fruition until the SBA had reimbursed the sureties. This court stated:

> The reimbursements, however, were part of the fruit of the scheme. Dick knew that the SBA would cover ninety percent of the sureties' loss on the [original defaulting subcontractor's] bond. Also aware of that fact, Heritage may have given Dick more leeway than it would have otherwise in letting the completion contract. Further, the regulations promulgated under the statutory mandate for the guarantee program require sureties, in order to qualify for the SBA guarantee, to affirm that without the guarantee they would not issue the bond to the principal.

Id. at 552.

We conclude that the checks mailed, as charged in Counts 23 and 24, helped to keep defendant's scheme concealed, made it easier for defendant's accomplices to continue dealing with the merchants involved, and thus, were in furtherance of the scheme. Although the mailings were simply directed towards settling accounts between victims, they occurred before defendant's scheme had reached fruition, and therefore support his conviction under 18 U.S.C. § 1341.[2]

---

[2] While one mailing found to be insufficient in *Parr* v. *United States*, 363 U.S. 370, 392-3 (1960), was a single check from the school district paying the oil company for gasoline obtained by defendants, there was no finding in *Parr* that the petitioners were involved in an ongoing, virtually perpetual scheme, as was defendant. Further, the Court did not address the benefit that petitioners obtained through concealment.

On the other hand, the invoice mailing charged in Count 22 was not in furtherance of the scheme, but worked against it, and the conviction on that count cannot stand. Although the mailing occurred on July 25, 1981, and this was before the scheme had reached fruition, the mailing made it more likely that defendant's scheme would be detected. We find this mailing to be indistinguishable from the one found insufficient in *United States* v. *Maze,* 414 U.S. 395, 400-01 (1974). Rather than concealing the fraud, this mailing put CWLP on notice that Hankins was receiving materials in its name, and the mailing could have prompted an audit that might have revealed that the automobile supplies were never used on CWLP equipment. "Indeed, from [defendant's] point of view, he probably would have preferred to have the invoices misplaced by [Sasco] and never mailed at all." *Maze,* 414 U.S. at 402. "Congress could have drafted the mail fraud statute so as to require only that the mails be in fact used as a result of a fraudulent scheme. But it did not do this; instead it required that the use of the mails be 'for the purpose of executing such scheme or artifice. . .'" Id. at 405. We reverse the conviction on Count 22.

Defendant next argues that there was insufficient evidence to link him with the stolen supplies. In reviewing the sufficiency of the evidence produced at trial, we must consider whether, taking the view most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson* v. *Virgnia,* 443 U.S. 307, 319 (1979); *United States* v. *Moya,* 721 F.2d 606, 609-10 (7th Cir. 1983), *cert. denied,* 104 S.Ct. 1312 (1984). Hankins testified that defendant asked him to get the materials charged in Count 24, and that he personally took them to defendant. Government Exhibit 324 consists of the invoices from SMW for the materials paid for by the check that constitutes the mailing charged in Count 23. Both Butler and Catalano testified that they obtained sandpaper, double-faced buffing pads, and #7447 3M

sanding pads for defendant, all of the type described in the invoice. A jury could reasonably infer that these items matched those charged in this count. In any event, as long as there is a sufficient nexus between the use of the mails and the fruits of an ongoing scheme, it is not necessary to match item for item stolen money or property with an individual mailing. *Cf. United States* v. *Lea*, 618 F.2d 426, 431 (7th Cir. 1980), *cert. denied,* 449 U.S. 823 (1980). Defendant was convicted of perpetrating a continuing scheme to defraud the city and the citizens of Springfield of materials to be paid for by CWLP, and of his honest and faithful service. We conclude that there was sufficient evidence to convict defendant of mail fraud on Counts 23 and 24.

Finally, defendant argues that there was no scheme to defraud in this case, only a series of isolated transactions. We disagree. Congress has decided not to define "scheme or artifice to defraud," because the range of potential schemes is as broad as the criminal imagination. *See United States* v. *Lemire*, 720 F.2d 1317, 1335 (D.C. Cir. 1983), *cert. denied,* 104 S.Ct. 2678 (1984). Defendant embarked on a persistent pattern of taking property that was to be paid for by the city, and of depriving the citizens of Springfield of his loyal and honest service. Defendant's repeated fraudulent actions were not accidental, and we have no difficulty in concluding that a scheme existed here, as the meaning of that word has evolved in the case law.

Defendant's conviction on Counts 23 and 24 is AFFIRMED, and his conviction on Count 22 is REVERSED. We vacate the sentence and remand the case to the district judge for a new sentencing determination on the two existing counts.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604
January 29, 1986

Before

Hon. WALTER J. CUMMINGS, *Chief Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. FRANK H. EASTERBROOK, *Circuit Judge*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 85-1119 vs.

PAUL R. BONANSINGA,

Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois, Springfield Division.
84 CR 30068
HAROLD A. BAKER, *Judge.*

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by Paul R. Bonansinga, defendant-appellant, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny the petition for rehearing and suggestion of rehearing *en banc*. Accordingly,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing and suggestion of rehearing *en banc* be and the same is hereby, DENIED.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No.

PAUL R. BONANSINGA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CERTIFICATE OF SERVICE

I, STEVEN J. ROSENBERG, a member of the Bar of this Court, hereby certify that on this 29th day of April, 1986, three copies of the Petition for Writ of Certiorari in the above entitled case were mailed, first class, postage prepaid, to Patrick J. Chesley, Assistant United States Attorney, Central District of Illinois, P. O. Box 375, Springfield, Illinois 62705. I further certify that all parties required to be served have been served.

STEVEN J. ROSENBERG

STEVEN J. ROSENBERG, P.C.
ATTORNEY AT LAW
77 West Washington Street
Suite 1614
Chicago, Illinois 60602
(312) 726-0383